

of fibers on an inner wrap of material which circumscribes a tobacco rod. Specifically, the smoking article is comprised of an outer wrap and an inner wrap circumscribing a tobacco rod. The inner wrap is comprised of a very specific range of wood fibers and flax. The specific range of wood fibers is from 55 to 85% by weight of the inner wrap and the flax is from 15 to 45% by weight of the inner wrap. This unique mix of wood fibers and flax fibers in the inner wrap improves the smoking characteristics in a smoking article, particularly as to a decrease in irritation and improved smoke test over double-wrapped smoking articles inner wraps which are made of a mixture of fibers other than wood and flax or different ranges of a mixture of wood fibers and flax fibers. For example, Example 3 of the instant application shows that an inner wrap of 50% by weight of abaca fibers and 50% by weight of wood fibers results in a smoking article that is moderate to high in irritation and the smoke taste is poor.

The Kopsch et al reference teaches a smoking article which is made of tobacco and/or other smokeable type materials which have anti-oxidating effects and/or naturally identical synthetic products thereof. And, as correctly pointed out by the Examiner, Kopsch et al teaches a cigarette which may be wrapped with two layers of paper wherein the inner wrap is of a highly porous Coresta paper which can be made mainly or entirely of suitable wood pulp. Furthermore, the Examiner acknowledges that Kopsch et

al does not teach an inner wrap that comprises 55 to 85% wood fibers and 25 to 45% flax. The Examiner also acknowledges that combining Hampl, Jr. with Kopsch et al does not teach the very specific inner wrap of the instant invention, as claimed. In fact, the Examiner acknowledges that the combination of Kopsch et al modified by Hampl, Jr. and Drewett does not teach the inner wrapper as claimed in the instant invention. All of the references suggested by the Examiner teach smoking article wrappers of substantially different compositions from the instant claimed invention. Each of these references are specifically directed to a smoking article which has different physical properties than that claimed in the instant application. As pointed out previously, Kopsch et al is directed to a smoking article made of tobacco or other smokeable type materials which have anti-oxidative effects. Hampl, Jr. is directed to a method for controlling the permeability of a wrapper paper for smoking articles, whereas Drewett is directed to a wrapper for making a smoking article which is made from wood fibers, specifically teaching the use of pine or eucalyptus as wood fibers in the cigarette wrapper. None of these references are remotely related to solving the problem to which the instant invention is directed and that is a smoking article having a double wrap with an inner wrap of a very specific range of flax fibers and wood fibers which reduces spotting and staining during storage and/or transportation and still provides a good taste with reduced irritation.

It is clear that the Examiner is piecing together teachings of the prior art in an obviousness rejection which a long line of patent cases teach is clearly improper. Specifically, in In Re Geiger, 815 F.2d 686, 2 USPQ 2d 1276, 178, it was held that "obviousness cannot be established by combining the teachings of the prior art to produce the claimed invention, absent some teaching suggestion or incentives supporting the combination". As noted above, none of the references are related to the teaching of the problem to which the instant invention is directed. Furthermore, even the composition of the inner wrap is not taught even with the combination of Kopsch et al with Hampl Jr. and Drewett as applied to the broadest claims in the instant application. The Examiner even acknowledges in the Official Action that "lastly, while Kopsch et al modified by Hampl, Jr. and Drewett may not explicitly teach an inner wrapping having 55-85% wood fibers and 25-45% flax". (Note - the instant invention claims 15-45% flax). Applicant submits that not only does the combination not teach the very specific inner wrap comprising wood fibers and flax fibers, none of the references teach, suggest, or provide any incentive for supporting the combination even if they did teach it. Thus, Applicant submits that the combination is improper. In Ex parte Skinner, 2 USPQ 2d 1788, 1790 (B.P.A.I. 1987) it was held that when the incentive to combine the teachings of the references is not readily apparent, it is the duty of the Examiner to explain why combination of the reference teachings is proper. Absent such reasons or

incentives, the teachings of the references are not combinable. Clearly, the Examiner has not met this duty.

Even further, in In Re Fritch, 972 F.2d 1260, 23 USPQ 1780, 1784 (Fed.Cir. 1992) the Court held that it was impermissible to use the claimed invention as an instruction manual or "template" to piece together the teachings of the prior art so that the claimed invention is rendered obvious. The Court further stated "one cannot use hindsight reconstruction to pick and choose among isolated disclosures in the prior to deprecate the claimed invention". Clearly, this is what the Examiner is trying to do, use the instant claimed invention as an instruction manual or template to piece together the teachings of the prior art as none of the references of the prior art are directed to the solving of the problem to which the instant invention is directed. The only commonality of these reference is they relate to cigarette articles having unique wrapping papers which are specifically designed to provide very specific smoking attributes to the smoking article. The same is true in the instant claimed invention and that is to provide a wrapper which does not stain or spot during storage, but still provides a smoker with desirable smoke characteristics. Thus, Applicant submits that the instant claimed invention is not taught nor remotely suggested in fact or law by the combination of references cited by the Examiner and therefore respectfully requests that the Examiner withdraw this rejection.

The Examiner has rejected claims 6 and 10 under 35 USC §103(a) as being unpatentable over Kopsch et al in combination with Hampl, Jr., Drewett and Schneider et al. Applicant respectfully traverses the Examiner on this ground of rejection.

Claims 6 and 10 are dependent claims of independent claims 1 and 7 claiming that the flax is selected from the group consisting of a specific combination of bast flax fibers and shive flax fibers wherein the bast flax fibers will be from 50 to 90% and the shive flax fibers will be from 10-50%.

Schneider et al is cited as allegedly teaching a cigarette paper which includes as a filler in the paper from 20 to 50% by weight of bast fibers of fine fibrillation which is incorporated in the paper to promote diffusion and particularly the diffusion of carbon monoxide. Nowhere does this reference teach or remotely suggest a wrapper for a cigarette which includes an inner wrap for reducing spotting or staining of the smoking article during storage or transportation much less an inner wrap having a very specific combination of wood fibers and flax fibers. The cigarette paper as taught by Schneider et al does not correct the deficiencies of the combination of Kopsch et al with Hampl, Jr. and Drewett. Thus, Applicant urges that claims 6 and 10 are not taught by the suggested combination and again the Examiner is piecemealing references which Applicant has explained is clearly improper as a long line of cases have held. Therefore,

Applicant respectfully requests that the Examiner withdraw this rejection of claims 6 and 10.

Applicant urges that the instant application is now in condition for allowance. However, if the Examiner believes there are other unresolved issues in this case, Applicant's attorney of record would appreciate a call at (502) 584-1135 to discuss such remaining issues.

Respectfully submitted,



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